

REMARKS

This responds to the Office Action mailed on May 6, 2003. Applicant thanks the Examiner for further amplifying the bases of rejection. For brevity, Applicant has focused these remarks on responding to such further amplification, however, Applicant incorporates by reference the arguments previously made of record in the prosecution of this patent application.

Claims 1, 16, 32, and 37 are amended. No claims are canceled or added. As a result, claims 1-5, 7-14, 16-17, 24 – 25, and 32 – 46 are now pending in this application.

Information Disclosure Statement

Applicant respectfully requests that a copy of the 1449 Form, listing all references that were submitted with the Supplemental Information Disclosure Statement filed on March 11, 2003, marked as being considered and initialed by the Examiner, be returned with the next official communication.

§102 Rejection of the Claims

Claims 1 and 7-14, 37, 38, 39 and 44 were rejected under 35 U.S.C. § 102(b) for anticipation by Schmidt (U.S. Patent No. 5,634,932). Applicant respectfully traverses. As explained below, Applicant can find no disclosure in Schmidt of a distal portion of the aneurysm treatment device being releasable to grasp about an aneurysm while a proximal portion of the aneurysm treatment device is disposed within the probe and the probe is accepted within the lumen of the trajectory guide device, as recited or incorporated in claims 1, 7 – 14, 37 – 39, and 44.

Schmidt apparently discloses, in Fig. 12, a guide tube 200 through which two legs 140 and 160 of an applicator extend. (See Schmidt at column 9, lines 19-20.) Projections 162 and 164 on the end of the second leg 160 engage the rigid ring 100. (See *id.* at column 9, lines 13-18.) A proximal handle 170 slides the second leg 160 with respect to the first leg 140 to push the rigid ring 100 in a distal direction to forcibly close and secure the arms 70 and 90 of the cantilever spring about the aneurysm. (See *id.* at column 9, lines 23-30.)

From Fig. 12 of Schmidt, it is apparent that the only way to disengage Schmidt's applicator from the cantilever spring and the rigid ring 100 is to move the legs 140 and 160 laterally with respect to the cantilever spring and the rigid ring 100. However, such lateral motion clearly would be impossible to obtain while the legs 140 and 160 are constrained by the guide tube 200, if the guide tube 200 were, in turn, constrained by a trajectory guide device, such as discussed in the present patent application. Instead, it would appear from Fig. 12 of Schmidt that Schmidt's guide tube 200 is not so constrained, and that Schmidt's guide tube 200 would move laterally together with the legs 140 and 160 to disengage the legs 140 and 160 from the cantilever spring and the rigid ring 100.

In sum, the device illustrated in Fig. 12 of Schmidt is clearly unsuitable for use with a trajectory guide device (which is clinically useful for preoperative planning and for highly accurate intraoperative guidance of an aneurysm clip through brain tissue toward an aneurysm). By contrast, Fig. 5 of the present application discloses an illustrative example that, unlike Schmidt, is compatible with a trajectory guide, as illustrated in Fig. 3 of the present application. No lateral movement is needed to release the aneurysm clip illustrated in Fig. 5 of the present application.

For the reasons given above, Applicant respectfully disagrees with the rejection's contention that the device of Schmidt will inherently include use of a trajectory guide. (See Final Office Action at 3.) Applicant can find no disclosure in Schmidt of a trajectory guide. Applicant has explained why the device of Schmidt would be impossible to use with a trajectory guide.

In view of the above, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

§103 Rejection of the Claims

1. Claims 16 and 17 were rejected under 35 U.S.C. § 103(a) for obviousness over Schmidt. For the reasons discussed above with respect to the § 102 rejection of claims 1 and 7-14, 37, 38, 39 and 44, Applicant respectfully submits that no *prima facie* case of obviousness presently exists with respect to these claims, because Applicant can find no disclosure in Schmidt of a distal portion of the aneurysm treatment device being releasable to grasp about an

aneurysm while a proximal portion of the aneurysm treatment device is disposed within the probe and the probe is accepted within the lumen of the trajectory guide device, as incorporated in claims 16 and 17 by their dependency from claim 1.

Moreover, Applicant can find no disclosure in Schmidt of a flexible strand, as recited or incorporated in claims 16 or 17. One example of a flexible strand is illustrated by strand 404 of Fig. 5. The strand 404 opens to release the clip 400. This releasing of the clip 400 is accomplished without needing any lateral movement. Among other things, this permits the clip 400 to be released when the probe is constrained by a trajectory guide device.

Furthermore, Applicant can find no disclosure in Schmidt of an elongate tube shaped to extend through the lumen of the probe, as recited or incorporated in claims 16 or 17, as conceded by the rejection. (See Final Office Action at 3.) Without admitting to the necessity or criticality of the elongate tube, Applicant respectfully submits that Fig. 5 of the present patent application illustrates one example of how such an elongate tube 406 pushes the clip 400 out of the distal end of the probe 106. Together with the flexible strand 404, this permits the clip 400 to be released without requiring any lateral movement. Among other things, this permits the clip 400 to be released when the probe is constrained by a trajectory guide device, as discussed above.

In view of the above, Applicant respectfully requests withdrawal of this basis of rejection of claims 16 and 17.

2. Claims 24 and 25 were rejected under 35 U.S.C. § 103(a) as obvious over Schmidt in view of Sheldon et al. (U.S. Patent No. 4,386,602). Claims 2-5 and 32-35 were rejected under 35 U.S.C. § 103(a) for obviousness over Schmidt in view of Gillies et al. (U.S. Patent No. 6,272,370). Claim 36 was rejected under 35 U.S.C. § 103(a) for obviousness over Schmidt in view of Gillies et al. and further in view of Sheldon et al.

For the reasons discussed above with respect to the §102 rejection of claims 1 and 7-14, 37, 38, 39 and 44, Applicant respectfully submits that no *prima facie* case of obviousness presently exists with respect to these claims, because Applicant can find no disclosure in Schmidt of a distal portion of the aneurysm treatment device being releasable to grasp about an aneurysm while a proximal portion of the aneurysm treatment device is disposed within the probe and the probe is accepted within the lumen of the trajectory guide device, as incorporated in claims 24 and 25 by their dependency from claim 1.

As discussed above with respect to the § 102 rejection of claims 1 and 7-14, 37, 38, 39 and 44, the device of Schmidt is impossible to use with a trajectory guide because lateral motion is needed to release Schmidt's cantilever spring—such lateral motion would be unavailable when the device of Schmidt is constrained by a trajectory guide. Accordingly, Applicant respectfully submits that the rejection improperly combines Schmidt with Sheldon or any other reference disclosing a trajectory guide.

In view of the above, Applicant respectfully requests withdrawal of these bases of rejection of these claims.

3. The Final Office Action also responded to Applicant's previous arguments. For example, the rejection states:

With respect to Applicant's arguments on page 7 of the most recent response that the reference of Schmidt is expressly directed toward surgical procedures requiring visual observations, the examiner respectfully disagrees. With reference to Column 2, lines 20 – 43 the exact opposite contention is expressed, with respect to the use of the plethora of imaging means disclosed (and in particular their usefulness with a titanium material as used here). Why else would such imaging means be so disclosed if the only intention of the Schmidt device was for visual observation.

(Rejection at 7.) Applicant respectfully submits that the cited portion of Schmidt is silent about intraoperative use of imaging to guide the surgical positioning of the aneurysm clip. Applicant believes that the cited portion of Schmidt merely relates to post-surgical imaging confirmation of proper placement of the aneurysm clip, with the clip required to be made of a material that does not interfere with the post-surgical imaging, and that does not cause a post-surgical safety hazard by moving or heating. Applicant respectfully maintains the position that the Schmidt device is intended for visually observed surgery rather than permitting image-guided surgery using a trajectory guide device. (*See, e.g.*, Schmidt at column 4, lines 14 – 17; column 4, lines 30 – 35; column 4, line 65; column 6, lines 43 – 45).

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney 612-373-6951 to facilitate prosecution of this application.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 – EXPEDITED PROCEDURE

Serial Number: 09/884434

Filing Date: June 19, 2001

Title: SYSTEM AND METHOD OF MINIMALLY-INVASIVE EXOVASCULAR ANEURYSM TREATMENT

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Dkt: 723.020US1

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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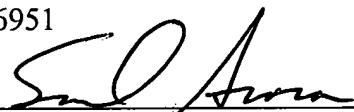
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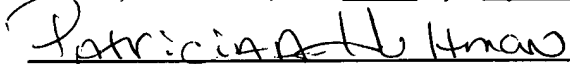
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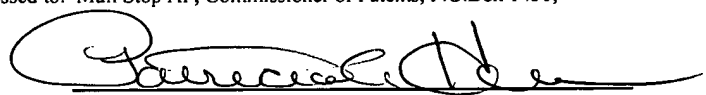
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